

The Development of Local Government in Kansas

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THE DEVELOPMENT OF LOCAL GOVERNMENT IN KANSAS.

by

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HAYS, KANSAS.

With that instinct for law and social order characteristic of the race, the English colonists upon settling in their home in America began at once to erect for themselves local governments. These governments they modeled, as they did all their institutions, after forms with which they had been familiar in Europe, with such modifications as the spirit and purpose of the community dictated and environments demanded.

Three general types of local government developed during the colonial period. First, the compact, highly localized system New England in which the town, or township, was the unit; second, the less democratic system of the Southern colonies with the larger area of the county as the unit; third, the mixed system of New York and the other middle colonies, which combined the main features of the other two systems, distributing the functions of local government between the county and the township.

(For full treatment of the development of local government among the colonies, see monographs upon local government in Johns Hopkins University Studies in History and Political Science)

In the new states added after the formation of the federal union the county system generally prevailed in the southern section and the mixed type in the north and west with strong modifications toward the New England type in some states of the latter section. The conflict between the New England and Southern elements in the suffrage of some of the states of the old Northwest Territory was strong and resulted in a sort of a compromise system, as in the case of Illinois. (See Local Constitutional History of the United States, by George E. Howard, for full discussion of local government in the states of the old Northwest Territory.)

The circumstances attending the organization of Kansas Territory brought the Northern and Southern elements into conflict for the control of the institutions of the future state, and the character of the local government was to be decided by the issue. Congress left the matter in the hands of the territorial government, the act organizing the territory providing "all township, district and county officers not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided for by the governor and legislative assembly of the territory of Kansas. (Sec. 25, Organic Act.)

Nothing was said in the organic act as to how the local governments should be organized, leaving the territorial government a free hand in the matter. The first territorial legislature was overwhelmingly pro-slavery in politics and southern in nativity, some of the members being still citizens of Missouri while sitting as members of the territorial legislature. The Missouri statutes were adopted almost bodily as the laws for the territory and, so far as organized local government followed the lines of the Missouri system.

The first session of the territorial legislature fixed the boundaries and established thirty-six counties. Seventeen

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of these counties were organized, the remainder being attached to adjacent organized counties for military, civil and judicial purposes. (Laws of 1855, Kansas Territory)

County seats were located in thirteen counties by the acts organizing the counties. It was provided that in the remaining counties temporary seats of justice should be established by the tribunals transacting county business, and that the people at the general election of October 1855 should select three commissioners in each county who should locate the permanent "seat of justice", or county seat. (Sec. 36, ch. 30, Laws 1855)

The man with the ax to grind made his appearance in the first legislature. A provision of the bill referred to above made it mandatory upon the commissioners elected for Lynn county to locate the permanent county seat within three miles of the center of the county. (Sec. 37, ch. 30, Laws 1855)

In most of the names given to the counties, prominent pro-slavery leaders, members of the legislature, or old settlers of the counties, were honored. By succeeding free state legislatures, most of the county names obnoxious to free-state sentiments were wiped off the map and more agreeable names substituted. (For naming of Kansas counties, see vols. 7 & 8 Collections of the Kansas State Historical Society)

Since the government surveys had not been completed, the territorial limits of the counties were defined by natural boundaries and distances. It was provided that after the land of the territory should be surveyed and subdivided by the government of the United States, the township or section lines that should come the nearest to the boundaries described in the bill establishing the counties, should be considered the lines therein described.

The county was vested with corporate powers enabling it to "sue and be sued, implead and be impleaded, prosecute and defend in all courts in all matters in which such county may be a party in interest, and may have and hold any amount of property, real, personal or mixed, which may be necessary for the transacting of their business for the public accommodation or for the public weal, or for the proper development of the resources of the territory". (Sec. I, chap. 39, Laws, 1855)

Representing the county in its corporate powers and transacting county business, was a county board of commissioners consisting of the probate judge of the county and two commissioners to be elected by the people for a term of four years. This board had much the same general powers as the county commissioners under the present system and in addition appointed a clerk who was ex-officio clerk of the probate court and county recorder, a county treasurer, a coroner, justices of the peace, and all special agents for the transaction of the county business. A subsequent act of the same session provided for the election of a county treasurer by the people. (ch. 32, Laws 1855)

A sheriff was elected in each county for a term of four years. He was ex-officio collector of taxes. (ch. 150, Laws 1855)

Probate court was an important tribunal. The probate judge was elected for a term of four years. He was chairman of the board of county commissioners, had jurisdiction in general probate matters, could issue writs of habeas corpus, grant writs of injunction, enforce decrees of his court, had concurrent jurisdiction with the district court in many cases and appellate jurisdiction in cases brought in justice of the peace courts. (Ch. 44, Laws of 1855.)

This session of the legislature passed but one act relating to the organization of townships and that merely gave to the board of county commissioners authority to divide the county into a convenient number of townships, erect new townships and sub-divide existing townships, furnishing the county recorder in each case a plat indicating the change. (Ch. 157, Laws of 1855.) No provision was made for organization of a township government, showing the intention of the legislature to establish the pure county system.

School districts were created by the board of county commissioners on their own initiative, and the voters of the district seemed to have no further power than to elect district officers. School townships might be erected by the voters at an election called for that purpose, upon petition. (Ch. 144, Art. 4, G. S., 1855.) This really meant that a township might be organized into a school district.

Temporary county officers were to be appointed by the legislature until the next general election for members of the legislative assembly when the people were to elect those not otherwise provided for. This provision was a slap at Gov. Reeder with whom the legislature was at war.

The undemocratic character and inefficiency of the system of local government established by the legislature of 1855 is apparent. Aside from the election of some of the county officers every four years the people had practically no voice in their local affairs. But this system was well suited to a community resting upon the institution of slavery which it was the purpose of these law makers to build into the structure of the commonwealth of Kansas.

The second session of the territorial legislature was too much engrossed with other affairs to give much attention to general legislation on local matters aside from raising the fees of most of the county officers.

In the third regular session of the territorial legislation which met January 4, 1858, the free state men were in the majority. The "bogus statutes" of the previous legislatures were repealed and new legislation enacted in harmony with the political ideas of the majority. The names of a number of counties were changed and the whole system of local government revised. (General Laws of Kansas Ter., 1858, pp 195-218.)

Counties continued to be organized by direct legislative acts. The corporate powers were defined to be: (1) To sue and be sued; (2) To purchase and hold real and personal property for the use of the county, and land sold for taxes as provided for by law; (3) To sell and convey any real or personal estate owned by the county and make such order respect-

ing the same as may be conducive to the interests of the inhabitants; (4) To make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate and administrative powers; (5) To exercise such other and further powers as may be especially conferred by law.

The powers of the county as a body corporate were exercised by a board of county supervisors consisting of the chairmen of the different township boards; but when the county consisted of only one township, then the board of supervisors of that township should constitute the county board. Thus at one stroke was the plan of local government projected far toward the New England system. The use of the word "town" for township in the text of the law also betrays its New England origin.

The general powers of the board of supervisors were; (1) To control the corporate property of the county; (2) To audit claims against the county and authorize county warrants issued in payment; (3) To provide county buildings; (4) To levy taxes; (5) To represent the county as its business agent; (6) To perform all other acts authorized by law. Among the special powers conferred subject to modification by the legislature were, the power to set off, organize or change boundaries of townships, appoint commissioners for laying out roads, levy taxes for specific purposes in townships or school districts, grant licenses for ferries, and pay bounty for destruction of certain noxious animals. The board was to meet at least once a year and receive a compensation of two dollars per day while in actual service, and mileage at that rate of six cents per mile for distant traveled to and from place of meeting.

Other county officers provided for were, sheriff, clerk of the board of supervisors, register of deeds, county attorney, coroner, auditor, treasurer, and surveyor, each elected by the people for a term of two years, the county superintendent of schools to be elected for a term of one year, and a probate judge whose term was four years.

The jurisdiction of the probate court was confined to probate matters, the general judicial functions of the county being exercised by justice of the peace and district courts. The general duties and powers of the county officers were much the same as at present except that the coroner was a sort of deputy sheriff and performed the duties of sheriff in case of the inability of that officer to act.

This session of the legislature also fully organized the township government. (Ch. 71, Laws of 1858.) The tendency toward the New England type is strikingly apparent in the institution of the township meeting. (Sections 6-24, ch. 71, Laws of 1858.) The voters of the township met once a year and elected a board of supervisors consisting of three members, one of whom was designated chairman and as such was a member of the county board of supervisors. This meeting also elected a township clerk, treasurer, four justices of the peace, four constables, one assessor, and one overseer of highways for each road district in the township. The meeting

was endowed with legislative powers. It could vote money for the support of schools, roads, bridges, the support of the poor, and for toher necessary expenses; could provide for representation of the township in suits at law in which the township was a party, and "make such orders for the management of all prudential affairs of the township as they may judge most conducive to the peace, welfareand good order ther eof." (Sec. 3, ch. 7I, Laws 1858)

The school district was made the unit for the control and support of the common schools. In powers and general plan of organization the school district remains much the same to-day as it was established by the legislature if 1858- the one institution in our scheme of local government preserving the true democracy of the old New England town meeting.

By the time of the meeting of the legislature of 1860 th contest for the control of the territory had practically been settled and legislation from that time was controlled less by sentiment and passion and more by practical considerations . Heretofore the attempt had been to make the community fit the institutions superimposed upon it by the law makers. By 1860 the more sensible plan of making the government fit the community began to be followed . Local government began to settle toward the mixed type which was better adapted to meet the conditions existing in the territory.

County and township governments were more clearly differentiated in the reorganization of the board of county commissioners. By act of Feb. 25, 1860 (Sec. 9, ch. 28, Laws 1860) it was provided that the county board should consist of three members, one from each of three districts into which the county should be divided. The term of office was three years, one commissioner being elected each year.

The term of the probate judge was reduced from four to two years. The office of county assessor was established. His term of office was one year. The county treasurer was authorized to receive taxes. (Ch. 28, Laws 1860)

Considerable change was made in the township government by act of Feb. 27, 1860. (CC^h. 128, Laws 1860) The township meeting gave way to merely an election of township officers. The township board of trustees and the offices of township clerk and township treasurer were abolished, leaving the township officers to consost of one trustee, two justices of the peace, two constables, and one road overseer for each road district. These officers were elected annually on the fourth Monday of March.

The township trustee was vested with great power. Section 4 of the act referred to in the preceeding paragraph defined the duties of the trustee to be : (1) To keep a true record of his official proceedings; (2) To receive and pay out money belonging to the township; (3) To divide the township into convenient road

and school districts; (4) To fill vacancies in the office of road overseer; (5) To perform all duties before performed by the township clerk, treasurer, and board of supervisors; (6) To have charge of the property of the township; (7) To have records made of boundaries of road and school districts; (8) To administer official oaths; (9) To be inspector of elections and overseer of the poor; (10) To superintend all pecuniary affairs of the township and by and with the advice of the county commissioners levy tax for township purposes.

No new township was to contain less than thirty-six square miles of territory nor fewer than three hundred inhabitants, and could be formed by the county commissioners only upon petition signed by at least fifty inhabitants of the proposed township.

The system of local government as worked out by the legislatures of 1858 and 1860 was in force at the time of the organization of the state government under the Wyandotte constitution in 1861, and in its most essential features has remained the same up to the present time. Experience and advancing ideas and ideals of civic problems have brought about some changes in the details of administration; increase in population, and industrial growth of the state have necessarily made our local institutions become more complex and more highly organized, but these changes have not materially effected the type, nor the fundamental principles of government involved in their organization.

Part II will deal with the more important changes in the details of county and township government during the period of statehood.

PART II. STATE PERIOD.

I. County Government.

A. Organization-- Section I of Article 4 of the state constitution vests the power of organizing new counties, locating county seats and changing county lines in the legislature, with the restriction that no county should be organized nor the lines of any county changed so as to include an area of less than four hundred thirty square miles. The first general law prescribing the method of organizing new counties was approved June 15, 1861. (ch. 14, Laws 1861) This act provides that when upon the affidavit of three resident freeholders in any of the unorganized counties of the state it is made to appear that such county contains not less than six hundred inhabitants, upon the petition of twenty or more freeholding inhabitants the governor shall appoint three persons mentioned in the petition to act as temporary commissioners, and one person also named in the petition, as clerk of the county. These persons shall proceed to organize the county by selecting some central place as the temporary county seat, dividing the county into townships, and calling and conducting an election for a full set of county officers and the selection of a permanent county seat.

The act of March 1, 1872 amended the above act by rais-

ing the required number of petitioners to forty, and 7 providing that the census of the county should be taken before organization. (Ch. 106, Laws 1872.) In 1876 the number of petitioners required was raised to two hundred and fifty and the number of residents to fifteen hundred. (Ch/ 63, Laws 1876.) The act of March 11, 1887, raised the number of petitioners to four hundred and the number of residents to two thousand, & required that the proposed county should contain at least \$150,000 worth of property. This was the last law passed on the subject and it is now obsolete, all the counties of the state having been organized. The tendency of all the acts on the subject was to discourage the formation of small and thinly populated counties. The reign of politicians and land boomers in western Kansas in the early eighties was the immediate occasion and necessity for the law of 1887.

B. County Seats.--Since the beginning of the state government the people in the newly organized counties have voted upon the location of the permanent county seat. By act approved March 2, 1868 it was provided that an election for the change of the location of the county seat should be called by the commissioners upon petition of a majority of the voters of the county, when the property of the county at the present county seat was of less than \$2,000 in value. If such property was valued at more than \$2,000 and less than \$10,000 the signature of three fifths of the electors was necessary, and if the value reached \$10,000 the signature of three fourths of the voters was necessary. (Ch/ 26, Laws 1868.) This act was amended by act of April 5, 1883 by requiring a three fifths vote of all the electors of the county to change the location of the county seat when the value of the buildings and property of the county at the county seat amounts to \$10,000 or more, or when the county seat has been continuously at one place for at least eight years. No election for relocating a county seat may be held within five years of a previous election for that purpose.

C. Powers--

By act of March 5, 1862, the corporate powers of a county were defined to be: (1) To sue and be sued; (2) To purchase and hold real and personal estate for the use of the county, as provided for by law; (3) To sell and convey any real or personal estate belonging to the county, and make such order respecting the same as may be deemed conducive to the interests of the inhabitants; (4) To make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of the corporate and administrative powers; (5) To exercise such other and further powers as may be especially conferred by law. (Ch. 25, G.S. 1868) This has not been amended.

Some of the more important special functions exercised by the county by the grace of the legislature are, the supervision of high ways and bridges, care of the poor, voting bonds for authorized purposes, and maintaining county high schools.

D. Officers--

I. County Board of Supervisors.

The law of 1860 providing for three commissioners for each county, remained in force until 1868 when it was amended so as to provide that in counties of over 24000 inhabitants the board should consist of one member from each township and city of the first or second class, to be chosen for a term of one year. In 1871 it was further amended by providing that in all counties having over 30000 population the board of commissioners should consist of one commissioner from each representative district in the county, and should be elected for a term of two years. In all other counties there should one commissioner from each of the three districts into which the county should be divided (ch/ 25 Laws 1876) The laws applying to certain counties limiting the term of county commissioners to one year was declared to be in contravention of section 3 Art. 9 of the state constitution, and of no effect. (Leavenworth county vs. Latta, 5 Kan. 688)

By amendment to the constitution adopted in 1876, county commissioners were exempted from the provision of the clause of the constitution referred to above. In 1901 the organization of the board was made uniform in all counties and was made to consist of three members elected from districts. (ch. 129 Laws 1901)

2. Other county officers.

Section 2 Art. 9 of the state constitution provides that the legislature shall provide for such county and township officers as may be necessary. Article 3 provides that there shall be elected in each county a clerk of the district court, a probate judge. Besides the officers already mentioned the legislature provided for the election of sheriff, county clerk, register of deeds, surveyor, assessor, and superintendent of schools. By act of June 4th, 1861 the office of county attorney was abolished, his duties to be performed chiefly by a district attorney. The office of district attorney was abolished and that of county attorney revived in 1864. (Ch. 31, Laws of 1864.) The act of March 3, 1869 abolished the office of county assessor and made the township trustees assessors. (Ch. 30, G. S., 1869.) The office of county auditor was established in counties of thirty thousand population or over by act of February 27, 1872. By act of February 27, 1876 the law was made to apply to counties of 25,000 or over. In 1891 the office of county auditor was abolished in all counties of less than 45,000 population. (Ch. 87, Laws of 1891.) In 1901 counties of 28,000 population or over were allowed the commissioner of the poor, to be appointed by the county commissioners. Under the provisions of the law of 1905 upon petition of at least five bee keepers of any one county the county commissioners shall appoint a bee inspector for that county for a term of two years. Counties maintaining a county high school under the law of 1886 (Ch. 147, Laws of 1886) or under special laws providing for such officers have six high school trustees elected by the people of the county for a term of two years. Under the provisions of the compulsory education law of 1903 the county commissioners shall, upon nomination by the county superintendent,

appoint not more than five nor less than one truant officer. (Ch. 423, Laws of 1903.) By act approved February 26, 1869 it was provided that the county commissioners of each county should appoint two competent persons who, with the county superintendent as chairman, should constitute a county examining board to examine teachers. (Chapter 86, Laws of 1869) A probation officer for each county is provided for by the law of 1905 establishing juvenile courts. (Ch. 190, Laws of 1905.) This completes the list of county officers under general laws. Wyandotte County has a public administrator, created by the law of 1903, elected at the same time and for the same term as the other county officers. There is also in this county a judge of the common pleas court.

E. The Judiciary---

The judicial functions of the county were originally exercised through the probate, justice of the peace, and district courts, but the growth of court business and the rather slow process of the district court have led to the establishment in many counties and cities, special courts. The legislature of 1891 created a circuit court for Shawnee County. (Ch. 83, Laws of 1891.) At the same session a court of common pleas was created for Wyandotte County. (Ch. 92, Laws of 1891.) Since that time many special city and county courts were established but most, if not all the special county courts have been abolished with the exception of the court of common pleas for Wyandotte County.

In 1905 juvenile courts for a treatment of juvenile offenders was created. The probate judge is the judge of the court. He appoints a probation officer, who may be one of the truant officers of the county. (Ch. 190, Laws of 1905.)

F. Elections, Terms, & election of county officers.

Elections for county officers were held annually part of the officers being elected each year until the year 1902 when the bi-ennial election law (Ch. 176, Laws of 1901) went into effect. Under the provisions of this law all county and township officers are elected bi-ennially for a term of two years.

The terms of all the county officers originally began the second Monday of January following their election. By act of February 23, 1866 the term of the county treasurer was to begin the first Tuesday in July following his election. This date was again changed to the second Tuesday in October following his election (Ch. 77, Laws of 1875) where it has remained. In 1899 the beginning of the term of the county superintendent was changed from the second Monday in January to the second Monday in May. (Ch. 244, Sec. 1, Laws of 1899) The beginning of the term of all other county officers remains the second Monday in January.

2. The Township.

A. Organization--The state constitution contemplates township organization in the provisions for officers, term of office, and manner of removal. (Sections 2, 3, 4, and 5, Art. 9, Constitution of Kansas.) The power of the legislature to organize township governments is fully implied.

From the beginning of the state history the board of county commissioners has had the power to set off, organize and change boundaries of townships, designate and give names there for and fix the time and place of holding the first election therein. (Ch. 25, G.S., 1868.) The new township according to this act must contain at least 30 square miles of territory and two hundred inhabitants. Commissioners could set off or organize townships only upon petition of at least 50 electors. (Sec. 24, Ch. 25, G.S., 1868.) This law was amended in 1881 so as to require three months notice before final action of the commissioners.

B. Powers

By act of March 11, 1868, each organized township was declared to be a body corporate and as such could sue and be sued, appoint all necessary agents and attorneys in that behalf and make all contracts that may be necessary and convenient for the exercise of its corporate powers.

Some of the specific powers that have been delegated to the township are, to own and maintain township buildings, care for roads and bridges, vote bonds under certain limitations for purposes conducive to the welfare of the township, maintain free public libraries, provide and secure public parks and cemeteries, and care for the poor. The law in regard to township libraries was repealed in 1901.

C. Officers--election, term, & ect.

By act of May 3, 1861, (Ch. 32, Laws of 1861) it was provided that there should be elected annually in each municipal township on the fourth Monday of March, one trustee two constables, and one road overseer for each road district in the township, and on the same date every two years two justices of the peace, or more if provided for by law. In 1868 the offices of township clerk and township treasurer were restored and the date for township elections was changed to the first Tuesday in April. In 1875 the time was changed to the time of the general election in November. (Ch. 92, Laws of 1875.) In 1877 the time of township elections was changed again to the first Tuesday in February. (Ch. 179, Laws of 1879.) In 1885 the time was again changed to the November general election (Ch. 195, Laws of 1885) where it still remains.

The length of term of the township officers except justices of the peace remain one year until the year 1903 when the term was made two years. (Ch. 235, Laws of 1903.)

Special legislation.

The passing of special laws applying only to certain counties, townships, or cities named or implied in the acts has been one of the greatest evils of legislation in Kansas. This class of legislation has been common and has been most pernicious in its general effects. It has covered nearly the whole range of legislation not prohibited by the constitution. Special powers have been conferred upon municipalities and officers, new offices created, salaries adjusted, courts created, and exemptions made from the application of general laws, all resulting in much inequality and oftentimes injustice.

The legislature of 1905 is to be commended for its attempt to remedy the evil in part by submitting to a vote of the people at the general election in 1906 an amendment to the Constitution providing that all laws of a general nature shall have a uniform operation throughout the state; and in all cases where a general law can be made applicable no special law shall be enacted. (Ch. 543, Laws of 1905.)

*This paper limited to an analysis
of the statutes.
Sources not traced → comparison with
other states not made, nor practical
operation discussed.*

F. H. Hodder.

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